

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY CGSA, INC. FOR)	
ISSUANCE OF A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY TO CONSTRUCT)	
AN ADDITIONAL CELL SITE IN LOUISVILLE,)	
KENTUCKY FOR THE PROVISION OF DOMESTIC)	CASE NO. 96-434
PUBLIC CELLULAR RADIO)	
TELECOMMUNICATIONS SERVICE TO THE)	
PUBLIC IN JEFFERSON COUNTY, KENTUCKY AND)	
THE LOUISVILLE MSA)	

O R D E R

On September 27, 1996, Kentucky CGSA, Inc. d/b/a BellSouth Mobility, Inc. ("BellSouth Mobility") filed an application seeking a Certificate of Public Convenience and Necessity to construct and operate a cellular radio telecommunications facility in the Louisville Metropolitan Statistical Area ("the Louisville MSA"). The proposed facility consists of a monopole antenna tower not to exceed 156 feet in height, with attached antennas, to be located at 202 Old Harrods Creek Road, Middletown, Jefferson County, Kentucky. The coordinates for the proposed facility are North Latitude 38° 14' 46.51" by West Longitude 85° 32' 37.19".

BellSouth Mobility has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the proposed facility. Based upon the application, the design of the tower and foundation conforms to applicable nationally

recognized building standards, and the plans have been certified by a Registered Professional Engineer.

Pursuant to KRS 100.324(5), BellSouth Mobility has submitted a proposal to the Louisville and Jefferson County Planning Commission ("Planning Commission") for the proposed construction. A letter from the Planning Commission was filed on January 3, 1997, stating that the proposal was approved on condition that the necessary minor plat approval was obtained prior to beginning any construction. BellSouth Mobility has filed applications with the Federal Aviation Administration and the Kentucky Airport Zoning Commission seeking approval for the construction and operation of the proposed facility. Both applications have been approved.

BellSouth Mobility has filed notices verifying that each person who owns property or resides within 500 feet of the proposed facility has been notified of the pending construction. The notice solicited any comments and informed the property owners and residents of their right to intervene. In addition, BellSouth Mobility has posted notice of the proposed construction in a visible location for at least two weeks after filing its application. The Commission received several protest letters objecting to the proposed construction. BellSouth Mobility responded in writing to the protests and under separate letter the Commission notified each protestor of the right to request intervention and a public hearing if BellSouth Mobility's response did not satisfy their concerns. On October 17, 1996, Rye & Shaughnessy Properties ("Rye & Shaughnessy") filed a motion to intervene which was later granted. After procedural issues were addressed by the Commission, a public hearing was held on April 23, 1997.

Rye & Shaughnessy questions the necessity and safety of the proposed facility and claims that the proposed construction may exacerbate an existing water drainage problem. Rye and Shaughnessy also alleges, inter alia, that residents of nearby Condominiums were not adequately notified.

During the hearing BellSouth Mobility offered extensive testimony and evidence in support of its application including the necessity and design of the proposed facility, the criteria used in selecting the proposed site, and the various alternative sites that were considered. BellSouth Mobility maintains that the selected location is suitable for the proposed facility and that sufficient buffers exist to help minimize any aesthetic impact on surrounding property. Witnesses for BellSouth Mobility stated that the proposed facility would not affect any water drainage problems and that the Condominium residents were not notified individually due to difficulties in acquiring a list of residents from the building manager. However, notice was sent to the building manager with instructions to post in a conspicuous area.

The Commission finds that the location is suitable for the proposed facility as supported by the Planning Commission's conditional approval of the proposed construction. The Commission further finds that BellSouth Mobility has adequately considered alternative sites prior to selecting the proposed location and that less objectionable sites are not likely to be found.

Pursuant to KRS 278.280, the Commission is required to determine proper practices to be observed when it finds, upon complaint or on its own motion, that the facilities of any utility subject to its jurisdiction are unreasonable, unsafe, improper, or insufficient. To assist the Commission in its efforts to comply with this mandate, BellSouth Mobility should

notify the Commission if it does not use this antenna tower to provide service in the manner set out in its application and this Order. Upon receipt of such notice, the Commission may, on its own motion, institute proceedings to consider the proper practices, including removal of the unused antenna tower, which should be observed by BellSouth Mobility.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that BellSouth Mobility should be granted a Certificate of Public Convenience and Necessity to construct and operate the proposed facility in the Louisville MSA.


IT IS THEREFORE ORDERED that:

1. BellSouth Mobility is granted a Certificate of Public Convenience and Necessity to construct and operate a monopole antenna tower not to exceed 156 feet in height, with attached antennas, to be located at 202 Old Harrods Creek Road, Middletown, Jefferson County, Kentucky. The coordinates for the proposed facility are North Latitude 38° 14' 46.51" by West Longitude 85° 32' 37.19".

2. BellSouth Mobility shall immediately notify the Commission in writing, if, after the antenna tower is built and utility service is commenced, the tower is not used for a period of 3 months in the manner authorized by this Order.

Done at Frankfort, Kentucky, this 6th day of June, 1997.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director